IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.69 OF 2001

Shri Mohamad Ninoo)
working as Khalasi)
In the Central Railway.)
Residing at : Gawali Wada)
Mamaji Talkies, Bhusawal) ... Petitioner

versus

1. The Union of India, Through)
The General Manager, Central)
Railway, Head quarters Office)
Mumbai CST Mumbai 400 001.)

2. The Divisional Railway)
Manager, Central Railway)
Bhusawal Division, Bhusawal)

3. The Assistant Works)
Manager (M), Electric)
Locomotive Works Central)
Railway, Bhusawal.) ... Respondents

Mr.M.D.Angal for the petitioner.
Mr.Suresh Kumar for the respondents.

CORAM : V.G.PALSHIKAR,
V.R.KINGAONKAR, JJ.
DATED : 01ST MARCH 2006.

ORAL JUDGMENT [PER V.G.PALSHIKAR, J] :-

1. By this petition, the petitioner has challenged the order passed by the Central

Administrative Tribunal rejecting his Original Application seeking quashing of charge-sheet issued to him by the employer - Union of India (Indian Railway).

2. The petitioner was employed as temporary khalasi from 6/9/78 and as required by Regulation of the railway, he filled an attestation form furnishing true and detailed information about him to the railway administration. This was done on 23/9/79. In this attestation form there was no mention of his arrest or of his trial or of the result of Sessions Case No.46/79.

3. After the sessions trial was decided, the result was communicated by the petitioner to the railway administration and as a consequence of that order, the administration proceeded to terminate the services of the petitioner. This was done without following process of natural justice. Obviously, the termination was stigmatic. The petitioner, therefore, filed a Regular Civil Suit in the Court of Civil Judge, Junior Division, Bhushaval challenging the order of termination. The termination was ordered on 22/2/1980. The suit was decided on 23/01/1984.

The termination order was set aside on the ground that it is a termination followed by suppression of certain information and, therefore, principle of natural justice ought to have been observed. They were not observed. Hence the termination was unsustainable. It was discussed certain amongst surmises that there appears to be no suppression of fact by the petitioner. This judgment achieved finality on 13/11/1990 when the appeal preferred by the Union of India was rejected by the appellate Court.

4. There after on 20/09/93 the employer - Union of India issued a charge sheet to the petitioner framing certain charges to which he was called upon to answer. In stead of answering the charges levelled, the employee - present petitioner filed an Original Application before the Central Administrative Tribunal seeking quashing of those charges on the ground that it is trying the petitioner all over again for the same set of facts viz. supply of false information. The Civil Court having held that there appears to be no ground to believe that the suppression had taken place at the instance of the petitioner.

5. The tribunal, after taking into consideration the material on record and the contentions raised, dismissed the original application of the petitioner observing that issuance of charge sheet was not barred by principle of res-judicata on appreciation of facts contain in its order. It is this order which is assailed before us on two grounds. First is that the principle of res-judicata did apply and therefore, the tribunal was wrong in law in rejecting the original application. The second ground is that the petitioner has suffered so much for all these years and, issuance of charge sheet was delayed by 14 years, it would be unjust in this situation to continue the agony of petitioner by requiring him to further undergo for trial following the charge sheet.

6. We have considered the submissions made on behalf of the petitioner. Regarding the principles of res-judicata, as embodied by Section 11 of the Code of Civil Procedure, 1908, are concerned, they do not apply to proceedings

before the tribunal under the Administrative Tribunal Act, 1985. Section 22 of the Act prescribes procedure and powers of tribunals. Section 22 of the Act provides that a Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and other provisions of this Act. There is, therefore, no question of principles of res-judicata being made applicable to the proceedings before the tribunal. There is therefore no need to refer to several judgments of the Supreme Court cited before us as they proceeded on the fact that Section 11 was applicable in those cases. In one judgment, the Supreme Court talks of about Article 22 Clause 3 of the Constitution of India and draws parallel inference that the contents of Article 22(3) of the Constitution of India were analogous to Section 11 of the Code of Civil Procedure and, therefore, with reference to Article 20 a man cannot be required to be face trial after he is acquitted of the same set of charges.

7. But in the present case, such is not the situation. Assuming for the sake of

determination of the issue raised that the principles of res-judicata analogous to those of rules as embodied by Section 11 of the Civil Procedure Code are attracted to the proceedings before the tribunal, in our opinion, the present set of circumstances clearly spell out that there has been no adjudication on a issue any time earlier including civil suit decided by the Bhusaval Court. While dealing with this aspect, the learned trial Court deciding the suit has observed in para 9 as :-

> "Moreover, the very denial of the plaintiff of the fact that, he had filled in the said form, makes it doubtful as to whether the said form was filled in by the defendant or not."

The question as to who filled in the said form was, therefore, a perplex question, not answered by the learned Judge. He, then, proceeded to consider that the allegations of false entry or information etc. made, clearly make out a case of the petitioner’s termination being stigmatic and, therefore, relying on principle of natural justice set aside the order of termination.

8. It is after the order of termination was set aside on rejection of appeal in November 1990 that the present charge sheet is issued. The charges read as under :-

1) That the said Shri Mohammad Ninoo Gavali, T.No.4530 while functioning as Khalasi in ELW Workshop, Bhusawal, during the period from 23-09-1979 has committed a serious misconduct in that he has deliberately concealed the factual information regarding his antecedent and gave false information to the Administration in column No.12 (a) and (b) of Attestation Form No.G413F inspite of specific printed instructions Revised 66 thereon under the caption "Warning". This amounts to violation of Rule No.3 General (1) (i) & (iii) of the Railway Servants (Conduct) Rules, 1966.

2) Statement of imputation of misconduct or misbehavior in support of articles of charge framed against Shri Mohammad Ninoo

Gavali, T.No.4530 working in ELW.BSL.

That the said Shri Mohammad Ninoo Gavali, T. No.4530 while functioning as Khalasi, during the period from 23-09-1979 had committed a serious misconduct in that he had deliberately concealed the factual information regarding his antecedent and gave false information to the administration in Column No.12 (a) and (b) of Attestation Form No.G413F inspite of specific printed instructions Revised 66 thereon under the caption "Warning". This amounts to violation of Rule No.3 General (1) (i) & (iii) of the Railway Servants (Conduct) Rules, 1966.

9. The petitioner was called upon to meet these charges. It is, therefore, now open for the petitioner to point out the followings :-

(1). He is not the author of Attestation Form.

(2). He has not supplied any information either false or otherwise to

the person who has filled in the said form.

(3). That he is ignorant of writing or understanding of Hindi or English.

(4). Also he would have adequate opportunity to say that his intention was not foul in filling of the form which he regarded as a ritual or empty formality.

All this is sought to be short circuited by seeking quashing the charges at this stage. It would be laying down incorrect precedent to hold that where the termination of service is held illegal for the reasons mentioned, no departmental proceedings for similar or same facts are permissible.

10. We need not cite the judgment of the Supreme Court of India where it has been unequivocally laid down that even though there is acquittal in past of the accused who is a government employee, the government is not

powerless to conduct departmental proceeding against that employee for misconduct.

11. So far as other contention of delay of 14 years is concerned, it is obviously baseless. Termination took place in 1980, Civil Suit filed by the petitioner was decided in 1984. Appeal carried by the Union of India was decided in 1990 and, thereafter the charge sheet is issued. The petitioner has successfully litigated before the Court of competent jurisdiction in getting his order of termination set aside. The petitioner has thereafter been in service till the date. There is, therefore, no question of charges being quashed on the ground of delay for which the Union of India was responsible.

12. That being a circumstance, there is no need to quash the charge sheet as issued to the petitioner. In our opinion, no legal or factual error is committed by the tribunal in rejecting the original application. There is no substance in this petition. There is no cause to interfere with. The order of tribunal is legal, valid and proper. In the result, the petition is dismissed.

[V.G.PALSHIKAR]

[V.R.KINGAONKAR]